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**TRIBAL COURT
OF THE
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS**

DIANE NAGANASHE,

Plaintiff,

v.

Case No. C-017-0599

ORDER AFTER HEARING

LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS ELECTION BOARD,

Respondent.

OPINION

This matter comes before the Tribal Court to consider Plaintiff's complaint regarding the conduct of a tribal referendum election. She asks that the Petition, upon which a Referendum Election was conducted by the Tribal Election Board on May 20, 1999, be declared invalid by this Court. A hearing in this matter was conducted by the Court on June 10, 1999. The Court has carefully considered the evidence and arguments presented by the parties.

CONTEXT:

From the outset, it should be noted that the Little Traverse Bay Bands tribal government is in an early stage of development. During this early stage, there will be many challenges faced

by the community and its government. Among such challenges are the following: the lack of a clear understanding and definition about the appropriate roles and authority of various governmental institutions; the lack of a fully-developed government and service infrastructure, including the express adoption of rules, policies and procedures; and the lack of experience and training of various officials and staff. These challenges, in particular, contribute to the community learning from its experiences, conflicts and mistakes. None of this should be unexpected. After all, this exercise of tribal self-government by the community is relatively new. It is said that “one who makes no mistakes is doing nothing” and that “the price of the unwillingness to take any risk because there is fear of making a mistake is to do nothing.” All of us must have empathy and patience for each other, as we engage in the development of tribal community and its government. We will make mistakes along the way. The important thing is that we strive to not make mistakes, and that we learn from them when they are made.

LEGAL ANALYSIS:

The Interim Tribal Constitution and Bylaws, as modified by Resolution 12079102, is the interim governing document of the Little Traverse Bay Bands of Odawa Indians by operation of law. *PL 103-324, Sec. 8; 25 USC, Sec. 1300k-6*. The only provision of that document that might apply to the instant matter is ARTICLE V, Section 6: “The Board of Directors shall enact appropriate ordinances to implement nominations and the holding of elections.”

An examination of the lawful authority and the appropriate roles for both the Tribal Court and the Election Board require a review of the tribal ordinances which create both of those institutions. The authority and role of the tribal courts is defined in *Waganakising*

Odawak Statute 1995020. The statute creates the judicial system and delegates it broad judicial powers. The statute provides the following: the judicial power extends to all cases, *WOS 1995020, Sec. II(B)*; the Tribal Court is a court of general jurisdiction, *WOS 1995020, Sec. III(A)*; and the Tribal Judiciary is independent from the legislative and executive functions of government., *WOS 1995020, Sec. 6*. **Thus, the Court has broad, independent authority in the judicial affairs of the Tribe.** The authority and role of the Election Board is likewise defined by tribal law. ARTICLE V of the Interim Tribal Constitution and Bylaws and all of the election ordinances enacted by the Tribal Council **are limited to** the conduct of Tribal Council elections. There is no tribal law implementing the right of referendum. One of the ways the right of referendum may be set into motion is by the petition of fifty (50) eligible voters of the Bands. *See Interim Tribal Constitution and Bylaws, Article IX*. At the hearing conducted by this Court, the Election Board stated that it has not promulgated any rules and regulations for the conduct of referendum elections, nor has the Tribal Council enacted any statutes or ordinances for such elections.

In this context, the Tribal Council referred the petition it had received in this matter “to the Election Board for certification and referendum if certified.” Court received into evidence a copy of the referral letter from the Tribal Council Secretary. The letter states that the Tribal Council formally adopted a Motion, at its April 11, 1999 meeting, to refer the matter to the Election Board.

DECISION REASONING:

One of the principles of good government is that election boards ought to be independent

from government to ensure that fair, impartial elections are conducted. Other governmental bodies, including tribal councils and tribal courts, should not be involved in the business of the election board. **The Tribal Court must act only under its proper authority and within its appropriate role.** The same is true of all governmental institutions and bodies. Each has its own set of **exclusive** duties and responsibilities. A relevant example is that the responsibilities of the Election Board belong to the Election Board and no other institution of government. It is this political principle which provides the *context* for the Court's opinion in this matter.

There is a widely-accepted method of providing for the resolution of elections disputes. It is the very method that has already been adopted by this Tribe to resolve protests to the election of Tribal Council members. The process provides that disputes **must** be resolved by the Election Board in the first instance. A challenge may be filed with the Tribal Court only after the Election Board has had an opportunity to resolve the matter. In some jurisdictions, the decisions of the election board are final. A court may only hear the matter if it involves impropriety of the election board or its members. **Impropriety means more than simply disagreeing with the decisions of the election board, it means that there have been violations of ethical standards.** On the other hand, other jurisdictions permit a review of election board decisions but limit the review according to administrative law principles. The decision of the election board can only be overturned if the board action is not in accordance with law; beyond the scope of its authority; is arbitrary and capricious; or its fact-finding is unsupported by substantial evidence.

Either of these methods would protect the Election Board from unwarranted intrusion into its affairs. It is up to each tribal community to decide which system is most appropriate. **Under either system, the Election Board must hear the matter.** The wisdom of this requirement is

that the Election Board is given an opportunity to fine-tune its process, or to rectify any mistakes or errors it might have made. It is simply not appropriate for the Court to involve itself into tribal elections by second-guessing the Election Board or micro-managing tribal elections.

In the instant matter, Plaintiff **did not** file her complaints with the Election Board. Plaintiff filed her complaints in the Tribal Court as a matter of first instance. She has not presented her complaints directly to the Election Board, and has thus deprived it of the opportunity to fine-tune its process or rectify any mistakes it might have made.

FOR ALL OF THE FOREGOING, Plaintiff's complaints regarding the conduct of the tribal referendum election of May 20, 1999 are **HEREBY DISMISSED**.

6/18/99

DATED

Michael Petoskey
Chief Judge